

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

The Doctor's Council of D.C. General)
Hospital,)

Petitioner,)

and)

The D.C. General Hospital Commission,)

Agency.)

PERB Case No. 83-R-11
Opinion No. 77

DECISION AND ORDER

On August 31, 1983 the Doctor's Council of the District of Columbia General Hospital (Council) filed a "Petition for Recognition and Petition for Recognition Without an Election" with the District of Columbia Public Employee Relations Board (Board) seeking to represent the medical officers employed by the District of Columbia General Hospital (DCGH). Upon the proper filing of a showing of interest by the Council, the Petition was accepted on September 28, 1983. On October 4, 1983, Board notices were forwarded for posting at employee work sites.

On October 24, 1983, DCGH filed its "Opposition to the Recognition Petition" and a "Complaint of Violation of Standards of Conduct". Essentially, DCGH opposes establishment of the proposed unit because, in its judgment, "... members of the proposed unit are supervisors, management officials, confidential employees or employees whose participation in a labor organization would result in a conflict of interest or otherwise be incompatible with law or the official duties of the employees". Further, DCGH contends that the proposed unit is inappropriate because "... it would not promote effective labor relations and efficiency of operations". Finally, DCGH contends that the Council failed to "...adopt, subscribe to or comply with the Standards of Conduct for labor organizations."

On November 2, 1983, the Board referred this matter to a hearing examiner for a report and recommendation on the issues raised. On December 2, 1983, a hearing was convened and continued on December 22, and 23, 1983, before the Hearing Examiner. On January 31, 1984, the parties filed post-hearing briefs. On February 15, 1984, the Hearing Examiner filed his "Report and Recommendation" with the Board and, on February 28, 1984, DCGH filed written "Exceptions to the Hearing Examiner's Report and Recommendation" and requested that the Board permit oral arguments.

The issue before the Board is whether or not the proposed unit is an appropriate unit for collective bargaining.

Based on his finding of facts, the Hearing Examiner reached the following conclusions:

1. The employees in the proposed unit are not management officials or supervisors within the meaning of Section [1709(b)(1)] of the Comprehensive Merit Personnel Act (CMPA) (D.C. Code Section 1-618.9(b)(1)).
2. There is no evidence that the proposed unit, if found appropriate, would not promote effective labor relations or impair the efficiency of operations at DCGH.
3. The medical officers concerned share a community of interest and constitute an appropriate unit of professional employees.

The Hearing Examiner recommended that the Board find the unit to be appropriate for collective bargaining and that an election be held to determine the will of the employees concerning representation.

On February 28, 1984, DCGH filed written "Exceptions and a Request for Oral Argument" with the Board. The Council filed no exceptions. Essentially, DCGH contends on a point by point basis, that each of the Hearing Examiner's findings are erroneous because, in its judgement, they are not supported by the evidence. Simply put, DCGH disagrees with each and every finding and, consequently, with the conclusions and recommendations of the Hearing Examiner.

The Board finds the Hearing Examiner's Report and Recommendation to be well reasoned and his conclusions and recommendations consistent with the relevant legal precedents applicable to this matter. The leading legal precedents on the question of the appropriateness of a unit of medical officers are New York Medical Center, ^{1/} Montefiore Hospital and Medical Center ^{2/} and NLRB v. Yeshiva University. ^{3/} The principles established in these cases were argued at length by the parties in the pleadings and before the Hearing Examiner and are not extensively detailed here.

^{1/} New York Medical College, 263 NLRB 124, 111 LRRB 1128 (1982).

^{2/} Montefiore Hospital and Medical Center, 261 NLRB 82, 110 LRRM 1048 (1982).

^{3/} NLRB v. Yeshiva University, 444 U.S. 672, 103 LRRM 2526 (1980).

The New York Medical College and Montefiore Hospital cases dealt directly with the issue of organizing efforts by medical officers within hospitals. In New York Medical College, the National Labor Relations Board (NLRB) held that physicians employed by a medical college are not supervisors or managerial employees. In Montefiore Hospital, the NLRB held that physicians are primarily concerned with patient care rather than managerial or supervisory matters. The NLRB also held that a unit of physicians may include part-time physicians since part-time physicians share a community of interest with full-time physicians.

The Yeshiva University case, while relevant, deals with the organizing efforts of faculty members at a university. In Yeshiva University, the U.S. Supreme Court held that full-time faculty members of a private university are managerial employees and may not be included in a collective bargaining unit of professional employees. There are, of course, significant differences in the internal structure of hospitals and universities. The Hearing Examiner's "Report and Recommendation" includes a thorough analysis of these cases and conforms in all respects to the legal principles set forth in New York Medical College and Montefiore Hospital.

DCGH argues vigorously in its "Exceptions" that the managerial exclusion principle established in Yeshiva University is controlling, i.e., because some of the medical officers' functions are managerial and supervisory, the proposed unit is not appropriate. The Hearing Examiner considered these arguments and found that the medical officers at DCGH are not management officials or supervisors and, therefore, the proposed unit is an appropriate unit for collective bargaining in the District of Columbia. The Board adopts the findings of the Hearing Examiner.

DCGH's request for oral argument before the Board is not supported by any contention that there are newly discovered facts or evidence which have not been presented previously. The parties have compiled a voluminous record through three (3) days of hearings, lengthy post-hearing briefs and written exceptions. There is no indication that the Hearing Examiner did not consider DCGH's arguments. It appears that all points were covered in great detail in the documents filed with the Board. Accordingly, the request for oral argument is denied because there is no indication that the record is, in any way, incomplete.

Finally, the Board has reviewed the documents filed by DCGH with its Petition and finds that the requirements of Section 101.2 of the Interim Rules of the Board have been satisfied in terms of the required showing of interest. Also, the Board finds that the filing of documents required by Section 101.3 of the Interim Rules of the Board have been satisfied by DCGH. Based on this analysis and consideration of the entire record, the Board adopts the findings and the recommendation of the Hearing Examiner that the proposed unit be determined to be appropriate for collective bargaining and that an election be authorized to determine the will of the employees concerning representation.

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O R D E R

IT IS ORDERED THAT:

The unit, as proposed by the Council, is an appropriate unit for collective bargaining and the parties are authorized to proceed with an election consistent with the requirements of Sections 102.4-102.5 of the Interim Rules of the Board to determine the will of the employees concerning representation,

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
April 23, 1984